

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC., AND )  
BAYER HEALTHCARE LLC, )  
Plaintiffs, )  
v. ) C.A. NO. 05-349-GMS  
BAXTER INTERNATIONAL INC., AND )  
BAXTER HEALTHCARE CORPORATION, ) Jury Trial Demanded  
Defendants. ) REDACTED VERSION DI 255  
BAXTER HEALTHCARE CORPORATION, )  
Counterclaimant, )  
v. )  
TALECRIS BIOTHERAPEUTICS, INC., and )  
BAYER HEALTHCARE LLC, )  
Counterdefendants. )

**PLAINTIFFS' MOTION IN LIMINE NO. 2 TO PRECLUDE EXPERT TESTIMONY  
REGARDING NON-INFRINGEMENT ALTERNATIVES**

Bradford J. Badke, Esquire  
Gabrielle Ciuffreda, Esquire  
ROPES & GRAY LLP  
1211 Avenue of the Americas  
New York, NY 10036  
*Of Counsel for Plaintiff and Counterclaim  
Defendant Bayer Healthcare LLC*

Redacted Version Filed: April 30, 2007  
Date: April 23, 2007

Jeffrey B. Bove (#998)  
Mary W. Bourke (#2356)  
Mark E. Freeman (#4257)  
Jaclyn M. Mason (#4737)  
Dana K. Hammond (#4869)  
Christopher E. Jeffers (*pro hac vice*)  
CONNOLLY BOVE LODGE & HUTZ LLP  
1007 North Orange Street  
P.O. Box 2207  
Wilmington, DE 19899-2207  
(302) 658-9141  
*Attorneys for Plaintiffs and  
Counterclaim Defendants*

Plaintiffs and Counterclaim Defendants Talecris Biotherapeutics, Inc. and Bayer

Healthcare LLC ("Plaintiffs") hereby move *in limine*, pursuant to Federal Rule of Evidence 702, to preclude Defendants Baxter International Inc. and Baxter Healthcare Corporation ("Baxter") from introducing any evidence or argument of "non-infringing alternatives" proffered by their damages expert, R. Bruce Den Uyl. A proposed form of Order is attached hereto as Exhibit A.

For the reasons set forth in Plaintiffs' Memorandum of Law submitted contemporaneously herewith, Plaintiffs respectfully request that the Court enter an Order granting their Motion *In Limine* No. 2.

Respectfully submitted,

*/s/ Jeffrey B. Bove*

Jeffrey B. Bove (#998)

Mary W. Bourke (#2356)

Mark E. Freeman (#4257)

Jaclyn M. Mason (#4737)

Dana K. Hammond (#4869)

Christopher E. Jeffers (*pro hac vice*)

CONNOLLY BOVE LODGE & HUTZ LLP

The Nemours Building

1007 N. Orange Street

P. O. Box 2207

Wilmington, DE 19801

(302) 658-9141

*Attorneys for Talecris Biotherapeutics, Inc.  
and Bayer Healthcare LLC*

Bradford J. Badke  
Gabrielle Cuiffreda  
ROPES & GRAY LLP  
1211 Avenue of the Americas  
New York, NY 10036  
(212) 596-9000  
*Attorneys for Bayer Healthcare LLC*

Redacted Version Filed: April 30, 2007  
Dated: April 23, 2007  
536071

## **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC., AND )  
BAYER HEALTHCARE LLC, )  
Plaintiffs, )  
v. ) C.A. NO. 05-349-GMS  
BAXTER INTERNATIONAL INC., AND ) JURY TRIAL DEMANDED  
BAXTER HEALTHCARE CORPORATION, )  
Defendants. )  
BAXTER HEALTHCARE CORPORATION, )  
Counterclaimant, )  
v. )  
TALECRIS BIOTHERAPEUTICS, INC., and )  
BAYER HEALTHCARE LLC, )  
Counterdefendants. )

[PROPOSED] ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2007, upon consideration of Plaintiffs' Motion *In Limine* No. 2 to Preclude Expert Testimony Regarding Non-Infringing Alternatives, it is hereby ORDERED that said Motion is GRANTED.

---

U.S. District Court Judge Gregory M. Sleet

**CERTIFICATE OF SERVICE**

I hereby certify on this 23rd day of April, 2007 I electronically filed the foregoing **Plaintiffs' Motion In Limine No. 2 to Preclude Expert Testimony Regarding Non-Infringing Alternatives** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 <a href="mailto:provner@potteranderson.com">provner@potteranderson.com</a>	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 <a href="mailto:smSPAETH@townsend.com">smSPAETH@townsend.com</a>
---	--

I also hereby certify that a true copy of the foregoing document was served upon the following in the manner indicated on April 23, 2007.

<b><u>Via Hand Delivery and E-Mail</u></b>	<b><u>Via Federal Express and E-Mail</u></b>
Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 <a href="mailto:provner@potteranderson.com">provner@potteranderson.com</a>	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 <a href="mailto:smSPAETH@townsend.com">smSPAETH@townsend.com</a>

/s/ Jeffrey B. Bove  
 Jeffrey B. Bove (#998)  
 CONNOLLY BOVE LODGE & HUTZ LLP  
 The Nemours Building  
 1007 North Orange Street  
 Wilmington, DE 19801  
 Telephone: (302) 658-9141  
[jbove@cblh.com](mailto:jbove@cblh.com)  
*Attorneys for Talecris Biotherapeutics, Inc. and Bayer Healthcare LLC*

Bradford J. Badke  
 Gabrielle Ciuffreda  
 ROPES & GRAY LLP

1251 Avenue of the Americas  
New York, NY 10020-1105  
(212) 596-9000  
*Attorneys for Bayer Healthcare LLC*